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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

KING COUNTY, a municipal corporation, and RALPH S. STACY, as County Assessor of King County, Washington, and CARROLL CARTER, as County Treasurer of King County, Washington,
Petitioners,

vs.

WASHINGTON CHOCOLATE CO., a corporation,
Respondent.

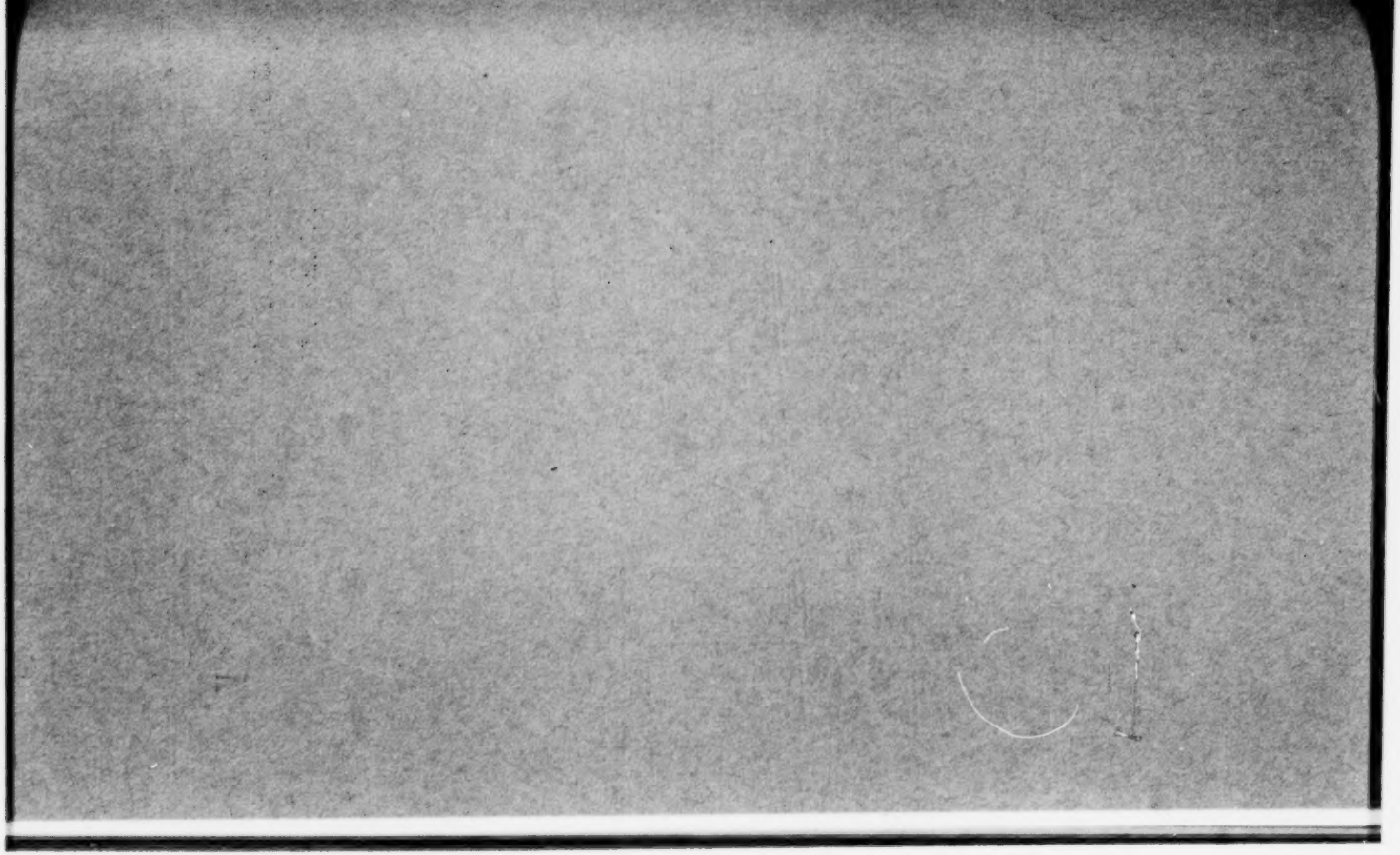
PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON and BRIEF IN SUPPORT THEREOF

LLOYD SHORETT,
F. M. REISCHLING,
Attorneys for Petitioners.
Seattle, Washington.

Of Counsel:
SMITH TROY, Attorney General of the State of Washington, Olympia, Washington.

EDWIN C. EWING, Assistant Attorney General of the State of Washington, Olympia, Washington.

THE ARGUS PRESS, SEATTLE



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SUBJECT INDEX

	Page
PETITION FOR WRIT OF CERTIORARI	1
Summary Statement of Matter Involved	1
Jurisdiction	3
Questions Presented	6
Reasons relied on for the allowance of the Writ	6
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	9
Opinion of the Court below	9
Jurisdiction	9
Statement of the Case	10
Specification of Error	11
Summary of Argument	11
Argument	12
Point A—The Federal Constitutional Prohibition against the State levying an "Impost or Duty" on imports does not prohibit the imposition of a non-discriminatory property tax on goods in their original packages, which tax is borne equally by all real and personal property within the State	12
Point B—Where goods are imported from a foreign country by a manufacturer and stored in his warehouse in the original package awaiting processing, the collection of an annual non-discriminatory ad valorem property tax does not constitute an "Impost or Duty," nor does the same interfere with the constitutional power of Congress to regulate commerce with foreign nations	16
Conclusion	22

TABLE OF CASES

Page

American Steel & Wire Co. v. Speed, 192 U.S. 500, 48 L. ed. 538 17

Baldwin v. Seelig, 294 U.S. 511, 79 L. ed. 1032 ..... 4, 6, 10, 17, 22

Bowman v. Continental Oil Co., 256 U.S. 642, 65 L. ed. 1139 17

Brown v. Maryland, 12 Wheat. 419, 25 U.S. 419, 6 L. ed. 678 ..... 6, 7, 15, 16

Cooley v. Board of Wardens of the Port of Philadelphia, et al., 12 How. 299, 53 U.S. 299, 13 L. ed. 996 13

Eastern Air Transport v. South Carolina Tax Commission, 285 U.S. 147, 76 L. ed. 673 17

General Oil Co. v. Crain, 209 U.S. 211, 52 L. ed. 754 17

King County v. Washington Chocolate Co., 121 Washington Decisions 608 3

License Cases, 5 How. 504, 46 U.S. 504, 12 L. ed. 256 ..... 17, 19

Low v. Austin, 13 Wall. 29, 80 U.S. 29, 20 L. ed. 517 ..... 15, 16

McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 84 L. ed. 565 ..... 4, 10

Pacific Insurance Co. v. Soule, 7 Wall. 433, 74 U.S. 433, 19 L. ed. 95 13

Puget Sound Power & Light Co. v. King County, 264 U.S. 22, 68 L. ed. 541 4

TEXTBOOKS

Records of Federal Convention, Vol. II, p. 442 14

Watson, "The Constitution of the United States," Vol. I, p. 837 14

STATUTES

Judicial Code, section 237(b), 43 Stat. 937, 28 U.S.C.A. §344(b) 3, 9

Laws of Washington 1939, Chapter 206 ..... 3, 10

Rem. Rev. Stat. §11111 ..... 3, 10

CONSTITUTION

Page

United States Constitution—
Art. I, Sec. 8 ..... 10, 11, 12, 16, 21
Art. I, Sec. 9 ..... 12, 13
Art. I, Sec. 10 ..... 7, 11, 12, 22

COURT RULES

United States Supreme Court Rule 38, 5(a) 3

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Petitioners,

vs.

WASHINGTON CHOCOLATE CO., a corporation,
Respondent.

No. .....

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

King County, a municipal corporation of the State of Washington, and Ralph S. Stacy, as County Assessor of King County, and Carroll Carter, as County Treasurer of King County, pray that a Writ of Certorari issue to review the judgment of the Supreme Court of the State of Washington, affirming a judgment of the Superior Court of the State of Washington for King County.

SUMMARY STATEMENT OF MATTER INVOLVED

Certain cocoa beans imported into the United States by the Washington Chocolate Company are sought to be subjected to a non-discriminatory state personal property tax by the petitioner, King County (R. 2).

These cocoa beans are imported from the African Gold Coast, Venezuela, Brazil, Ecuador, and Costa Rica, and come into the United States through the ports of New York, New Jersey, and New Orleans, and are then carried by rail to Seattle, at the import freight rate. Upon arrival in Seattle, they are stored at the respondent's warehouse, in the gunny sacks in which they were imported. They remain in the respondent's warehouse until used in its manufacturing business (R. 3).

The Assessor of King County placed a valuation for tax purposes on these beans for the year 1943 in the amount of $34,380.00, said sum representing fifty per cent of the true and full value of such property (R. 2). The cocoa beans have not become mingled with other property, and are so stacked and marked as to be identifiable as having been imported by the respondent from foreign countries (R. 3).

By a five to four majority, the Supreme Court of the State of Washington holds:

> "Following the unbroken line of authorities, commencing with the case of *Brown v. Maryland*, with emphasis upon the case of *Low v. Austin*, we hold that the trial court correctly decided that the merchandise in question is exempt from *ad valorem taxation* by the state of Washington, and that under its complaint respondent is entitled to maintain this action." (R. 39)

Judge Steinert, writing the dissenting opinion for the four dissenting judges, says in part:

> "I dissent, upon the ground that at the time the merchandise here in question was assessed for taxation the property had lost its original

character of a foreign import and had become a part of the general mass of property situated within the state and as such was subject to taxation upon the same basis as similar property which had its origin within this country." (R. 40)

The decision of the Supreme Court of Washington is reported in 121 Washington Decisions 608.

JURISDICTION

1. The statutory provision which sustains the jurisdiction of this court is Judicial Code, Section 237(b), as amended by the Act of February 13, 1935, c. 229, §1, 43 Stat. 937, 28 U.S.C.A. §344(b).

2. The applicable rule of this court is Rule 38, 5(a).

3. The statute of the State of Washington, the validity of which is involved, is Chapter 206 of the Laws of Washington, 1939, amending Chapter CXXIV of the Codification of the Laws of Washington, 1893, known as Remington's Revised Statutes of Washington, §11111, providing in part:

> "All real and personal property now existing, or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation for state, county, and other taxing district purposes as provided by law, upon equalized valuations thereof, fixed with reference thereto on the first day of January at 12 o'clock meridian, in each and every year in which the same shall be listed, except as hereinafter provided. * * *"

The remaining portions of the statute relate to exemptions to taxation, which are not pertinent here.

4. Cases believed to sustain jurisdiction are:

Baldwin v. Seelig, 294 U.S. 511, 79 L. ed. 1032;

McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 84 L. ed. 565.

5. The judgment of the Supreme Court of Washington was entered November 28, 1944. This petition is docketed prior to February 28, 1945. The decision of the Supreme Court of Washington was announced October 27, 1944.

Under *Puget Sound Power & Light Co. v. King County*, 264 U.S. 22, 68 L. ed. 541, 44 S. Ct. 261, the time for filing a petition for certiorari does not begin to run until the judgment is entered by the Supreme Court of Washington.

6. The essential question is whether the cocoa beans stored in their import packages at the respondent's manufacturing plant, were moving in foreign commerce so as to be beyond the taxing power of the State.

The following excerpts from the record make this clear:

The respondent's complaint alleges:

> "* * * Said cocoa beans, including the cocoa beans the assessment of which is the subject of the action, are imported by Washington Chocolate Co. from the African Gold Coast, Venezuela, Brazil, Ecuador and Costa Rica. Such shipments of cocoa beans are imported into the United States by plaintiff through the Port of New York, the Port of New Jersey, or the Port of New Orleans, and are then carried by rail to Seattle at the import freight rate which is paid by plain-

tiff. Upon arrival in Seattle, the cocoa beans are stored by plaintiff either at its plant at 528 Pontius Avenue, Seattle, or at the warehouse of Commercial Warehouse Co. at 112 Alaska Way, Seattle, where they remain until used in plaintiff's manufacturing business.

* * * * * * *

"That said purported assessment is illegal and void in that it is in conflict with and violative of the Constitution of the United States, Article I, Section 10, paragraph 2, which provides:

" 'No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.'

* * * * * * *

"That said purported assessment is illegal and void in that it is in conflict with, and violative of the Constitution of the United States, Article I, Section 8, paragraph 3, which provides that congress shall have power

" 'To regulate commerce with foreign nations and among the several states and with Indian tribes'." (R. 2, 3, 4)

The trial judge, in his memorandum opinion filed December 21, 1943, said:

"The merchandise here sought to be taxed, being foreign imports, stored in the warehouse upon being unloaded, remaining untouched, unopened, and in the original packages, under the

decisions above quoted is 'exempt' from taxation, and this court has jurisdiction." (R. 15)

QUESTION PRESENTED

Whether goods imported from foreign countries by a manufacturer and held in their original packages awaiting processing by the manufacturer, are beyond the reach of a non-discriminatory state property tax.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

The judgment and decision of the Supreme Court of Washington holds that even after the foreign commerce has been concluded, imported property remaining in original packages is exempt from taxation, and need not bear its burden of the cost of government along with other property owned within the State. After the decision of *Brown v. Maryland*, 12 Wheat. 419, 6 L. ed. 678, it was thought that the classification of property in commerce was to be artificially fixed by the application of the "original package" doctrine. This was to apply whether the commerce was foreign or between the states. However, the "original package" doctrine, as it applied to interstate commerce, no longer forbids a state property tax. See *Baldwin v. Seelig*, 294 U.S. 511, 79 L. ed. 1032, 1040, wherein Judge Cardozo said:

> "The test of the 'original package,' which came into our law with *Brown v. Maryland*, * * * is not inflexible and final for the transactions of interstate commerce, whatever may be its validity for commerce with other countries * * * There are purposes for which merchandise, transported from another state, will be treated as a part of

> the general mass of property at the state of destination, though still in the original containers. This is so, for illustration, where merchandise so contained is subjected to a non-discriminatory property tax which it bears equally with other merchandise produced within the State."

We ask that the court apply the same logical reasoning in now determining whether the "original package" doctrine has application to foreign imports, at least to the extent decided in *Brown v. Maryland, supra.* Only confusion can result in upholding the validity of the doctrine in transactions in foreign commerce and denying the validity of the doctrine in transactions in interstate commerce. It is submitted that there is no basis for distinction between the two types of commerce.

Art. I, Sec. 10, of the Federal Constitution provides, in part: "No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports * * *." We contend that this provision has no application to a non-discriminatory state property tax and that this is especially true where the commerce is ended and the goods are merely awaiting processing by the importer.

It is respectfully submitted that the cause should be reviewed by this court and the writ of certiorari issued.

LLOYD SHORETT,
F. M. REISCHLING,
Attorneys for Petitioners.
SMITH TROY, Attorney General of the State of Washington, Olympia, Washington.
EDWIN C. EWING, Assistant Attorney General of the State of Washington, Olympia, Washington.